

REMARKS

Claims 1-37 are pending in this Application, with claims 15-18 having been previously withdrawn. Though no claims have been amended with this Response, Applicant respectfully submits the above claim listing for the Examiner's convenience. Applicant respectfully thanks the examiner for indicating the Allowable Subject Matter of claim 7.

Applicant respectfully requests that the Examiner consider the below remarks instead of those submitted in the Response filed on March 18, 2009. The Examiner's rejection will now be respectfully addressed.

Rejections under 35 U.S.C. 102(e)

Claims 1-6, 8-14, and 19-37 are rejected under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Publication No. 20040075544 to Janssen ("Janssen" hereinafter). Applicant respectfully traverses.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Further, an international filing date of a reference is a U.S. filing date for prior art purposes under 35 U.S.C. 102(e), "If the international application meets the following three conditions:

- (1) an international filing date on or after November 29, 2000;
- (2) designated the United States; and
- (3) published under PCT Article 21(2) in English" (please see **MPEP 2136.03**).

Applicant respectfully points out that Janssen does not meet the above quoted conditions. Specifically, under condition 3 above, Janssen was published in German as opposed to English. Accordingly, and also under MPEP 2136.03 B, Janssen does not include a 102(e) date, and should not be used in a 102(e) rejection.

Instead, Applicant respectfully notes that such a reference may be applied under 102(a) or (b) as of the reference's publication date. However, in the case of Janssen, the earliest publication date is the PCT Publication date of June 6, 2002. Thus, as Applicant's claims include foreign priority dates of April 19 and 26, 2002, which occur prior to Janssen's June 6, 2002 publication date, Janssen also does not qualify as 102(a) or (b) prior art over Applicant's claims. For at least these reasons, Applicant respectfully submits that Janssen does not anticipate or qualify as prior art over Applicant's claims 1-6, 8-14, and 19-37.

Conclusion

The Examiner is invited to contact Applicant's attorney at the below-listed phone number regarding this Response or otherwise concerning the present application.

Applicant hereby petitions for any extensions of time necessary under 37 C.F.R. §§1.136(a) or 1.136(b).

If there are any charges due with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicant's attorneys.

Respectfully submitted,
CANTOR COLBURN LLP

By: /Daniel R. Gibson/
Daniel R. Gibson
Registration No. 56,539
CANTOR COLBURN LLP
20 Church Street
22nd Floor
Hartford, CT 06103
Telephone: 860-286-2929
Facsimile: 860-286-0115
Customer No. 23413

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